Supreme Court, U.S.
FILED
FEB 23 1978
MICHAEL RODAK, JR., CLERK

No. 77-859

In the Supreme Court of the United States

OCTOBER TERM, 1977

G. M. LEASING CORP., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,

M. CARR FERGUSON,
Assistant Attorney General,

JONATHAN S. COHEN,
ANTHONY ILARDI, JR.,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

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OPINIONS BELOW

The district court's findings of fact and conclusions of law are not reported. The first opinion of the court of appeals is reported at 514 F. 2d 935. The opinion of the court of appeals on remand from this Court (Pet. App. A-1 to A-9) is reported at 560 F. 2d 1011.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 1977. By order dated November 14, 1977, Mr. Justice White extended the time for filing a petition for a writ of certiorari to and including December 14, 1977, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the court of appeals correctly held that agents of the Internal Revenue Service were not liable for damages for violations of the Fourth Amendment committed while levying on petitioners' property where they had a reasonable and good faith belief that their conduct was lawful.

STATEMENT

George I. Norman, Jr., was the general manager of petitioner G. M. Leasing Corp. In 1971, Norman was convicted of aiding the misapplication of funds from a federally-insured bank. After exhausting all of his appeals, he became a fugitive from justice (Pet. App. A-2; 429 U.S. 338, 340-341).

Norman and his wife filed an incomplete 1970 tax return which contained no information as to income or deductions. They also submitted at $405,125 check to the Internal Revenue Service for application on their 1971 tax; this check was dishonored. Neither of the Normans filed a 1971 return (429 U.S. at 341).

Once Norman became a fugitive, the Internal Revenue Service activated its investigation of him and issued jeopardy assessments against Norman and his wife in excess of $1 million. The Service determined that petitioner G. M. Leasing Corp. was an alter ego of Norman and that the corporation's assets, largely luxury automobiles, were subject to levy to satisfy Norman's tax liability (Pet. App. A-2). Respondent revenue agents thereupon seized certain automobiles registered in petitioner's name.[1]

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[1]This Court held that the seizures that were executed in public places did not violate the Fourth Amendment (see 429 U.S. at 351-352). Hence, they are no longer involved in this action.

On March 21, 1973, respondents executed a further levy upon assets of the corporation located in a cottage used as its business office. Since the cottage was locked, they gained entry with the aid of a locksmith. During the period of the agents' entry, Norman's son, George I. Norman, III, arrived at the cottage, which he was using as a residence. When he asked the agents why they were there, they withdrew without seizing any property because of their uncertainty whether the cottage was a residence or a business place (Pet. App. A-2 to A-3).

On March 23, the agents, acting without a warrant and with the assistance of locksmiths and the equipment of a private van and storage firm, entered the cottage and removed its remaining contents, including furnishings and books and records (Pet. App. A-3; 429 U.S. at 345-346).

Petitioners brought this action in the United States District Court of Utah challenging the Service's jeopardy assessments and its determination that G. M. Leasing Corp. was Norman's alter ego, and seeking damages from the revenue agents for their warrantless seizure of assets. The district court found that the assessment was erroneous, that the Normans had no tax liability for 1970 and 1971, that the corporation was not Norman's alter ego, and that the agents' conduct was an illegal search and seizure. The court concluded that petitioner G. M. Leasing Corp. was entitled to damages against the agents in an undetermined amount. The court of appeals reversed on all of these issues (Pet. App. A-3; 514 F. 2d 935).

This Court held that the revenue agents' warrantless seizure of G. M. Leasing's assets violated the Fourth Amendment, and remanded the case to the court of

appeals to consider the question of damages (Pet. App. A-3 to A-4; 429 U.S. at 359-361).[2]

On remand, the court of appeals concluded that the agents entered the cottage "on the reasonable and good faith belief that their conduct was lawful" (Pet. App. A-9). In reaching this conclusion, the court stated that "[o]f principal importance is the undisputed fact that the officers conducted the seizure upon the advice of IRS regional counsel" (*ibid.*). It therefore held that the agents were not liable for damages.

ARGUMENT

1. The court of appeals correctly held that the revenue agents were not liable for damages in connection with their warrantless seizure of petitioner G. M. Leasing's property. Prior to this Court's decision in *G. M. Leasing Corp.* v. *United States*, 429 U.S. 338, it was the standard practice of the Internal Revenue Service not to obtain warrants authorizing the entry into a taxpayer's private premises for tax collection purposes (see 429 U.S. at 360). Here, in conducting the seizure, the agents followed the advice of counsel that they were acting lawfully in entering petitioner's premises without a warrant. Under these circumstances, the court of appeals properly concluded that "the officers entered the cottage on the reasonable and good faith belief that their conduct was lawful" (Pet. App. A-9).[3]

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[2]Although the petition is styled "*G. M. Leasing Corp. and George I. Norman, III* v. *The United States of America, et al.*," this Court's grant of certiorari limited to the Fourth Amendment issue eliminated George I. Norman, III, from the case (see 429 U.S. at 351 and n. 17). Thus, the only petitioner is the corporation.

[3]Although the district court found that one of the agents acted maliciously during the seizure, the court of appeals held that there was no evidence to support this finding (Pet. App. A-9 n. 5).

2. In determining that the agents were not liable for damages because they acted in good faith, the court of appeals applied a qualified immunity standard. Although we believe that the agents had absolute immunity for the reasons set forth in our briefs in *Butz* v. *Economou*, No. 76-709, argued November 7, 1977, the Court need not consider that question.

The court of appeals properly determined that under the qualified immunity standard the agents were immune from suit because they acted on the good faith belief that their conduct was lawful, and that factual determination does not warrant further review.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

M. CARR FERGUSON,
Assistant Attorney General.

JONATHAN S. COHEN,
ANTHONY ILARDI, JR.,
Attorneys.

FEBRUARY 1978.

DOJ-1978-02